IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO. 420 OF 2004

Continental Construction Limited ....
Applicants V/s
Export-Import Bank of India & Anr..... ...
Respondents.

WITH

CIVIL APPLICATION NO. 441 OF 2005

Export-Import Bank of India ... .
Applicants V/s
Continental Construction Limited.... ...
Respondents.

WITH

CIVIL APPLICATION NO. 2829 OF 2005

State Bank of India..... ... Applicant.
V/s
Continental Construction Limited.... ...
Respondents.

IN

WRIT PETITION NO. 3768 OF 2002.

Continental Construction Ltd.. .... Applicants.
V/s
Export-Import Bank of India & Ors..... .. ..
Respondents

Mr.Aspi Chinoi, Sr.Counsel with Kevic Setalvad and G.M. Kotwal i/by Tayabji Dayabhai for respondent No.1-Export Import Bank of India C.A. 420/04 and for applicant in C.A.No.441/2005 and for respondent No.2 in C.A.No.2829 of 2005.

Mr.Janak Dwarkadas with S.A. Diwan, Sr. Counsel and V. Sharma i/by Goenka

for the petitioners.

Mr.A.Kathpalia with J.N. Shiradhonkar for Continental Construction Co.- applicants.

Mr.H. Bhave with S. Pawar for respondent NO.2. (State Bank of India.)

Mr.R.B. Jaiswal, for United Commercial Bank.

CORAM: V.G. PALSHIKAR

AND

D.B. BHOSALE, JJ.

27.10.2005.

PC:

By these civil applications prayer is made for permitting the deposit of second installment of money presently with the United Commercial Bank under orders of this Court to be given to the Export-Import Bank of India and the State Bank.

2. The facts necessary for adjudication of these applications stated briefly are as under:

Original Application No.1214 of 2000 was filed before the Debt Recovery Tribunal, Bombay by Export-Import Bank of India praying for decree of the sum prayed for towards money due from the Continental Construction Company. During the pendency of this original application certain moneys were deposited for appropriation by Continental Construction Company and since the dispute was pending the amounts were deposited in the Debt Recovery Tribunal, Bombay. By an interim order money so deposited was paid to the Export-Import Bank of India. Debt Recovery Tribunal directed deposit of that money. The order of Debt Recovery Tribunal was confirmed

by the Debt Recovery Appellate Tribunal which has become final.

3. Thereafter second installment of money was received and therefore some applications were moved. Debt Recovery Tribunal ordered deposit of the money. The order is confirmed by Appellate Tribunal which orders are subject matter of challenge under Writ Petition No.3768 of 2002. The prayers made therein read as under:

> "A. A writ of certiorari or any other appropriate writ order or direction for quashing the order dated 12.6.2002 passed by the Debts Recovery Appellate Tribunal Mumbai in Appeal No.28 of 2002 and the order dated 27.12.2001 passed by the Debts Recovery Tribunal, Mumbai on Exhibit 9 in O.A. No.1241 of 2000;
>
> B. an ad-interim writ order or direction staying the operation of the impugned order dated 12.6.2002 passed by the learned Debts Recovery Appellate Tribunal, Mumbai in Appeal No.28 of 2002 till the disposal of the Petition filed by the petitioner."
>
> C. ex-parte orders in terms of prayer (B) above till the hearing on ad-interim prayer;
>
> D. Any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. By prayer (a) the orders passed by the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal are sought to be quashed and by prayer (b) stay of the order is prayed for. During the pendency of this petition as an interim arrangement the entire sum of money was directed to be deposited with the United Commercial Bank awaiting further orders of this Court. All the above civil applications are filed to seek further orders in relation to this deposit with United Commercial Bank pursuant to the orders made by the

Debt Recovery Tribunal on 6.2.2004. Due to several reasons and orders passed by different High Courts the matter reached the Supreme Court of India where the question as to what happens to the money deposited in this Court was under consideration. The question was decided by the Supreme Court by its order dated 5.9.2005. The Supreme Court observed that the order of the Supreme Court dated 21.9.2004 does not come in the way of hearing and disposal of Writ Petition No.3768 of 2002 and Civil Application Nos.420 of 2004 and 441 of 2005 in that writ petition. Then the Supreme Court notes the concession made at the Bar that the amount of money which is likely to be affected by any order passed by High Court in writ petition and the applications is presently lying with UCO Bank, New Delhi and if the applications and the writ petition are allowed the amount may go to Export-Import Bank of India. Thus the only effect would be whether the money remains with one bank or the other. While Supreme court directed hearing of that application by this Court and observed that whatever interim arrangement this Court would order while deciding above civil applications would be subject to the final decision rendered by any competent forum which would bind the Bassi group and Chander Verma group of Continental Construction Ltd.

5. Placing heavy reliance on these observations of the Supreme Court learned counsel appearing on behalf of the Export-Import Bank of India has stated that the Export-Import Bank has in its favour the order passed by the Debt Recovery Tribunal directing payment of that money to be covered by compromise which it recorded. This was subjected to an

appeal and is presently pending in the main writ petition. The submission is that in view of the order of the Court of competent jurisdiction being in its favour appropriation of that money presently lying in United Commercial Bank be transmitted to Export-Import Bank subject to directions and observations made by the Supreme Court in the order dated 5.9.2005.

6. This prayer is opposed by one group of Continental Construction Company viz. Chander Varma group whereas the Basi group supports Export-Import Bank and has filed Civil Application No.420 of 2004 to that effect. The Basi group however has opposed the application for similar orders made by the State Bank of India. We have to consider these rival submissions in the light of the pendency of writ petition and the prayers made therein. Basically the prayers made in the writ petition and civil applications for appropriate of money are almost similar. Making any order directed the payment of money deposited with the United Commercial Bank to any of the contending parties would be finally adjudicating the writ petition No.3768 of 2002 itself. The dispute in writ petition is larger than the prayers made in this application. No injury of any kind would be caused by any of the parties if money continues to be with the United Commercial Bank. We feel that it would not be proper in view of the inter se dispute between Continental groups that any deposit is ordered to change hands which

may generate further dispute between the parties. Writ petition can be decided expeditiously. There is no need, in our opinon, to direct change of hands in relating to deposit as prayed for these Civil Applications. In the result therefore civil applications are rejected. C.C. Expedited.